

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: APU	CCRB Case #: 201705989	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/16/2017 4:36 AM	Location of Incident: Outside Prospect Billiards Cafe, 671 Prospect Avenue	Precinct: 40	18 Mo. SOL 1/16/2019	EO SOL 1/16/2019	
Date/Time CV Reported Sun, 07/16/2017 5:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/24/2017 2:45 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Mardjonovic	6319	955123	040 PCT
2. POM Majeed Arif	02098	956395	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Elbi Martines	22951	962583	040 PCT
2. POM Juan Santiago	09507	951206	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Mardjonovic	Force: Police Officer Daniel Mardjonovic used physical force against § 87(2)(b)	
B.POM Daniel Mardjonovic	Force: Police Officer Daniel Mardjonovic used physical force against § 87(2)(b)	
C.POM Majeed Arif	Force: Police Officer Majeed Arif used a chokehold against § 87(2)(b)	
D.POM Majeed Arif	Force: Police Officer Majeed Arif restricted § 87(2)(b)'s breathing.	

Case Summary

On July 16, 2017, § 87(2)(b) called the IAB Command Center and filed this complaint on behalf of himself and his wife, § 87(2)(b). IAB forwarded the complaint to the CCRB, where it was received on July 24, 2017. Separately, on July 25, 2017, § 87(2)(b) called the CCRB and filed a complaint regarding the same incident on his own behalf (Board Review 01). The two complaints were combined into this one CCRB complaint.

On July 16, 2017, at approximately 4:36 a.m., there was a dispute outside a billiards hall, “Prospect Billiards Cafe,” at 671 Prospect Avenue in the Bronx. An individual, known to the CCRB only as § 87(2)(b) called 911 and reported that people were fighting at the location and that one person was bleeding (Board Review 02). At least 12 officers responded to the scene, including two officers from the 40th Precinct: PO Daniel Mardjonovic and PO Majeed Arif.

A patron of Prospect Billiards Cafe, § 87(2)(b) was outside the location when officers arrived. § 87(2)(b) testified that he was not involved in any physical altercation but that he was nevertheless approached by only PO Mardjonovic and placed in handcuffs. § 87(2)(b) alleged that while he stood still in handcuffs, PO Mardjonovic punched him in the right cheek one time with a closed fist (**Allegation A**). § 87(2)(b) alleged that after going to the ground, PO Mardjonovic punched him in the back a couple of times (**Allegation B**). § 87(2)(b) stood up from the ground, with the assistance of PO Mardjonovic, and PO Arif approached him.

PO Arif began to physically escort § 87(2)(b) to a police vehicle. § 87(2)(b) alleged that PO Arif grabbed him by the neck with both hands—one making contact with the front of his neck and the other the back—and applied various amounts of pressure for approximately 20 seconds (**Allegation C**). § 87(2)(b) alleged that as a result of PO Arif’s pressure around his neck, § 87(2)(b)’s breathing was partially restricted (**Allegation D**).

Cell phone video footage (Board Review 03) provided to the CCRB by § 87(2)(b) a Snagit copy of which is placed below and a summary of which may be found at Board Review 04—appears to capture PO Arif escorting § 87(2)(b) to a police vehicle. The Snagit copy below first plays the video at normal speed and then twice repeats the video at slower speeds.



201705989_20171031_0909_DM.mp4

§ 87(2)(b) was arrested as a result of this incident and charged with three misdemeanors and three violations (Board Review 05). His top charge was § 87(2)(b).

This case surpassed the 90-day benchmark largely because of the extensive efforts which were made to obtain video footage and civilian testimony.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b)’s arrest.
- A Notice of Claim inquiry was submitted with the New York City Comptroller’s Office on October 30, 2017 (Board Review 06). The results will be added to the case file upon receipt.
- § 87(2)(b)’s criminal charges stemming from this incident were adjourned in contemplation of dismissal (Board Review 07). § 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 09).
- PO Mardjonovic has been a member of service for four years, and this is the first CCRB complaint made against him.
- PO Arif has been a member of service for three years, and he has been the subject of two previous CCRB allegations, none of which were substantiated.

Potential Issues

- Extensive efforts were made to obtain sworn statements from complainant/victim/witness § 87(2)(b) victim/witness § 87(2)(b) and witnesses § 87(2)(b) and a manager of Prospect Billiards Cafe § 87(2)(b). These efforts were ultimately unsuccessful (see Investigative Actions).
- Both individuals who called 911 during the incident—§ 87(2)(b) and § 87(2)(b) (listed as § 87(2)(b) on the Event documentation)—indicated that they did not witness or recall any interaction between police officers and civilians (see Investigative Actions 86 and 87).
- Extensive efforts were made to obtain video footage from Prospect Billiards Cafe and surrounding businesses—including letters, calls, subpoenas, and in-person visits—but they were ultimately unsuccessful (see Investigative Actions).
- The IAB log indicated that § 87(2)(b) attempted to provide IAB with cell phone videos of the incident. Sgt. Kevin Lynch of Patrol Borough Bronx Investigations Unit confirmed that they received four cell phone videos of the incident (see Investigative Action 128). A Reznick request for the video footage was submitted, but the police department refused to provide it, citing that their investigation regarding this incident remained open (see Investigative Action 151).
- The investigation was unable to determine who recorded the video footage that § 87(2)(b) provided to the CCRB. § 87(2)(b) indicated that he received the video from someone via Instagram, but he refused to provide this person's name or Instagram account information.

Findings and Recommendations

Allegation A – Police Officer Daniel Mardjonovic used physical force against § 87(2)(b)

It is undisputed that PO Mardjonovic responded to a call regarding a fight outside of Prospect Billiards Cafe, and that § 87(2)(b) was standing outside Prospect Billiards Cafe when PO Mardjonovic arrived. It is undisputed that PO Mardjonovic alone approached § 87(2)(b).

It is further undisputed that PO Mardjonovic punched § 87(2)(b) in the face one time with a closed fist. The circumstances of the punch remain disputed.

§ 87(2)(b) (Board Review 10) testified that he was not involved in any physical altercation prior to PO Mardjonovic approaching him. § 87(2)(b) testified that he was solely standing outside Prospect Billiards Cafe talking with an unidentified female individual whose

name and contact information he did not know. § 87(2)(b)'s arrest report, the criminal court complaint report and supporting deposition (Board Review 11), and testimonies of PO Mardjonovic (Board Review 12) and PO Elbi Martines of the 40th Precinct (Board Review 13) were consistent in describing § 87(2)(b) as being physically engaged in a fight.

PO Mardjonovic testified that he approached § 87(2)(b) and secured his right hand in handcuffs, but that § 87(2)(b) then tensed his body, moved his arm, and repeatedly turned away from PO Mardjonovic, refusing to allow his left hand to be handcuffed. PO Mardjonovic testified that he repeatedly told § 87(2)(b) to just place his hands behind his back. PO Mardjonovic testified that an unidentified individual approached him, was bumping into him, and was insisting that § 87(2)(b) had done nothing wrong. PO Mardjonovic testified that § 87(2)(b) turned to face him, grabbed the handcuffs with his free hand, and said, "You're not cuffing me." PO Mardjonovic testified that approximately two seconds after § 87(2)(b) did this, he punched § 87(2)(b) in the left jaw with his right fist. PO Mardjonovic testified that § 87(2)(b) stumbled backwards, at which point he was able to take him to the ground and secure him in handcuffs. PO Mardjonovic testified that § 87(2)(b) had not done anything else, other than what is described above, prior to PO Mardjonovic punching him in the face.

PO Mardjonovic testified that he punched § 87(2)(b) in the face because there were two civilians and only him, because § 87(2)(b) was physically and verbally resisting arrest, and because he needed to get the situation under control. PO Mardjonovic testified that he punched § 87(2)(b) particularly in the face because it was his instinctual reaction in the moment, and that he did not call for assistance prior to punching § 87(2)(b) in the face because the situation was happening so fast. The Threat, Resistance or Injury Report ("TRI") (Board Review 14) was consistent with PO Mardjonovic's testimony.

§ 87(2)(b) alleged that PO Mardjonovic punched him in the face only after he was secured in handcuffs and while he was standing still. PO Mardjonovic denied punching § 87(2)(b) after he was handcuffed, although he acknowledged momentarily grabbing § 87(2)(b) by the front collar of his shirt when § 87(2)(b) was secured in handcuffs and allegedly began to verbally threaten PO Mardjonovic's family.

The only other officers reportedly in the area when PO Mardjonovic punched § 87(2)(b) in the face were PO Martines and PO Arif (Board Review 15). They both denied seeing PO Mardjonovic punch § 87(2)(b).

An officer may only use the amount of force reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (Board Review 16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Police Officer Daniel Mardjonovic used physical force against § 87(2)(b)

It is undisputed that after PO Mardjonovic punched § 87(2)(b) in the face, § 87(2)(b) went to the ground. § 87(2)(b) alleged that PO Mardjonovic punched him in the back two times. PO Mardjonovic denied punching § 87(2)(b) in the back and insisted that he only punched him once, in the face, while § 87(2)(b) was resisting arrest.

PO Arif testified that when he first saw § 87(2)(b) and PO Mardjonovic were both on the ground, although he did not recall their exact positions. PO Arif testified that he immediately approached and helped secure § 87(2)(b) in handcuffs. PO Arif denied seeing PO Mardjonovic punch § 87(2)(b). PO Martinez denied seeing § 87(2)(b)'s apprehension, and he denied seeing PO Mardjonovic punch § 87(2)(b).

§ 87(2)(b) provided a photograph to the CCRB which appears to show bruising to his back (Board Review 17). § 87(2)(b) indicated that he took the photograph a few days after the incident, but he did not recall exactly when.

The TRI indicates that § 87(2)(b) did not sustain any physical injuries. Neither § 87(2)(b)'s prisoner pedigree card (Board Review 18) nor the Command Log (Board Review 19) lists any injuries to § 87(2)(b). It is undisputed that § 87(2)(b) was offered medical treatment, but he refused it. § 87(2)(b) testified that he refused medical attention because he did not want to delay his arrest processing.

§ 87(2)(g)

Allegation C – Police Officer Majeed Arif used a chokehold against § 87(2)(b)

Allegation D – Police Officer Majeed Arif restricted § 87(2)(b)'s breathing.

It is undisputed that after § 87(2)(b) was handcuffed, PO Arif and PO Juan Santiago of the 40th Precinct (Board Review 20) began to escort § 87(2)(b) to a police vehicle. PO Arif testified that § 87(2)(b) indirectly spat at the ground prior to being led to a police vehicle. No other officer testified that § 87(2)(b) spat at any point during the incident, and this is not documented in any police paperwork, including PO Arif's memo book (Board Review 21). PO Arif testified that § 87(2)(b) did not spit while being escorted to a police vehicle.

Other than PO Santiago testifying that § 87(2)(b) was walking more slowly than appropriate, it is undisputed that § 87(2)(b) did not physically resist being escorted to a police vehicle and that § 87(2)(b) was not spitting while being escorted.

§ 87(2)(b) alleged that while being escorted to a police vehicle, PO Arif put his hands around the front and back of his neck and applied various levels of pressure, partially restricting his breathing for approximately 20 seconds.

Squad: 5

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date